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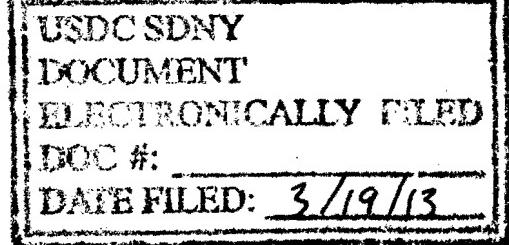
MEMO ENDORSED

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March 14, 2013

Via Facsimile

The Honorable Magistrate Judge Henry Pitman
United States District Court
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312



Re: *WNET, et al. v. Aero, Inc.*, No. 12-cv-1540-AJN - Consolidated

Dear Judge Pitman:

The WNET Plaintiffs request that the agenda for the hearing on March 21, 2013 include Aero's Motion to Quash the WNET Plaintiffs' subpoena to Google, Inc. ("Aero's Motion"). Aero's Motion is based on the supposed burden the subpoena imposes on Google (even though Google did not submit an affidavit or any papers in support of Aero's Motion) and claimed inadequacies of the protection afforded under the Amended Protective Order entered in this case.¹

The WNET Plaintiffs' subpoena, which seeks documents relating to Aero's marketing and advertising strategies as well as the Google Analytics data pertaining to Aero's website, was served on December 7, 2012. Aero filed a Motion to Quash on December 21, and the matter was fully briefed by January 22, 2013. The Honorable Paul S. Grewal, Magistrate Judge of the Northern District of California, took the matter under submission on January 25, 2013 without holding a hearing. *See American Broadcasting Companies, Inc. et al v. Aero, Inc.*, United States District Court, Northern District of California, Case No. 5:12-mc-80300-RMW, ECF. No. 11. As no ruling has been issued yet on Aero's Motion and Google's documents were subpoenaed for the purposes of using them in connection with depositions to be taken in this

¹ Aero's position in its Motion is inconsistent with Aero's description of the Amended Protective Order submitted to this Court in its March 12, 2013 letter in which Aero described the Amended Protective Order as putting "more than sufficient measures in place to ensure the protection of confidential information."

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case, the WNET Plaintiffs believe that this Court should be aware of Aereo's Motion when setting the new discovery cutoff. Further, the WNET Plaintiffs request that Aereo's Motion be decided by this Court to expedite discovery in this case.² This seems to be an appropriate course of action because only the WNET Plaintiffs and Aereo have an interest in Aereo's Motion. Google did not file a motion to quash or any papers to support Aereo's Motion, but rather informed counsel for the WNET Plaintiffs that Google would produce the subpoenaed documents if Aereo had no objection. See Shepard Decl., ¶ 3.

Sincerely,

Julie A. Shepard

cc: All Counsel of Record

² Courtesy copies of the Aereo's Motion, the WNET Plaintiffs' opposition and Aereo's reply along with all supporting papers (including the Declaration of Julie Shepard ("Shepard Decl.") in support of the WNET Plaintiffs' opposition) will be submitted to the Court today.

ENDORSEMENT

WNET, et al. v. Aereo Inc.
12 Civ. 1543 (AJN) (HBP)

Given that Aereo's motion to quash WNET's subpoena has already been fully briefed to Judge Grewal and has been before Judge Grewal for approximately two months, I shall not consider it at the conference scheduled for March 21, 2013. It is inappropriate to have two judges considering the same motion at the same time.

Dated: New York, New York
March 18, 2013

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

All Counsel

MEMO ENDORSED